

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/17
Date: **16 January 2023**

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Marc Perrin de Brichambaut
Judge Gocha Lordkipanidze

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

**Notice of discontinuance of the appeal of the Prosecutor against the
“Decision pursuant to article 18(2) of the Statute authorising the Prosecution to
resume investigation” (OA5)**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the***Court to:****The Office of the Prosecutor**

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1. Pursuant to rule 157 of the Rules of Procedure and Evidence, and as the sole appellant in this matter, the Prosecutor hereby provides notice of the discontinuance of the appeal¹ against paragraph 59 of Pre-Trial Chamber II’s decision of 31 October 2022.² In accordance with the Appeals Chamber’s guidance in *Lubanga*, this right may be exercised at any time prior to the issue of judgment, and effectively disposes of the appeal.³
2. Although a notice under rule 157 need not provide reasons, and must be without reservation,⁴ the Prosecution provides the following remarks to explain this procedural step, while respecting the requirements of rule 157.
3. While the Prosecution respectfully maintains its position that the investigation is not limited in the way described in paragraph 59 of the Decision—in light of the fact that the issue was definitively settled by the Appeals Chamber in its judgment of 5 March 2020⁵—the Prosecutor has decided not to proceed with the appeal in the interests of judicial economy, and mindful of the Court’s limited resources.
4. In particular, the Prosecution recalls the conclusion of the Appeals Chamber in this situation that:

[T]he Prosecutor is authorised to commence an investigation ‘in relation to alleged crimes committed on the territory of Afghanistan in the period since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other States Parties in the period since 1 July 2002’.⁶

¹ [ICC-02/17-197 OA5](#) (“Notice of Appeal”); [ICC-02/17-198 OA5](#) (“Prosecution Appeal Brief”). See also [ICC-02/17-203 OA5](#) (“Observations by Embassy of Islamic Republic of Afghanistan”); [ICC-02/17-201 OA5](#) (“Observations by Legal Representatives of Victims (Ms Nasiri)”); [ICC-02/17-202 OA5](#) (“Observations by Legal Representatives of Victims (OPCV)”); [ICC-02/17-204 OA5](#) (“Observations by Legal Representatives of Victims (Mr Moloney et al.)”); [ICC-02/17-205 OA5](#) (“Prosecution Request for Leave to Reply”).

² [ICC-02/17-196](#) (“Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation”, or “Decision”).

³ [ICC-01/04-01/06-176 OA2](#) (“*Lubanga* Discontinuance Decision”), para. 8.

⁴ [Lubanga Discontinuance Decision](#), paras. 8-9.

⁵ [ICC-02/17-138](#) (“*Afghanistan* Appeal Judgment”).

⁶ [Afghanistan Appeal Judgment](#), para. 79 (“the Appeals Chamber considers it appropriate to amend the Impugned Decision to the effect that the Prosecutor is authorised to commence an investigation ‘in relation to alleged crimes committed on the territory of Afghanistan in the period since 1 May 2003, as well as other alleged crimes that have

5. Since the Pre-Trial Chamber authorised the resumption of the Prosecutor's investigation on 31 October 2022, the Prosecutor has proceeded with the investigation on the basis of these parameters. The investigation therefore encompasses alleged conduct by the 'Islamic State – Khorasan Province', to which specific reference had been made in the Prosecutor's article 15(3) application as an anti-government armed group which was party to the ongoing conflict and allegedly responsible for the commission of crimes under the Statute.⁷ It also encompasses alleged conduct subsequent to the Prosecution's Article 15(3) Request that falls within the parameters set by the Appeals Chamber.

6. Finally, while the Prosecutor considers it appropriate to discontinue the appeal, this is without prejudice to further litigation of this matter, on the basis described above, if the parameters of the situation and the scope of the Court's jurisdiction were to be put in issue in the future.



Karim A.A. Khan KC, Prosecutor

Dated this 16th day of January 2023

At The Hague, The Netherlands

a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other States Parties in the period since 1 July 2002”).

⁷ [ICC-02/17-7-Red](#) (“Article 15(3) Request”), paras. 19, 63 and 126. *See also* para. 38 (emphasising that the parameters of the situation should not be limited to the specific crimes mentioned in the Article 15(3) Request).